

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 326 OF 1983

Date of decision: 06-08-1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

NARENDRAKUMAR JIVANLAL RAMI

vs.

THE COMMERCIAL AHMEDABAD MILLS LTD.

1. Whether Reporters of Local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether their Lordships wish to see the fair copy of the judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

None present for the petitioner.

Mr. Kaushal Thakkar for K.S. Nanavati for respondent No. 1

Mr. Nigam Shukla for respondents No. 2 and 3.

Coram: S. K. KESHOTE, J

(06-08-1996)

ORAL JUDGMENT:

Heard the learned counsel for the respondents.

Challenge is made by the petitioner to the order of the Controlling Authority dated 17th August, 1982. The petitioner approached the Controlling Authority with the prayer for making order against the respondent Company for giving him gratuity. The total amount of gratuity claimed by the petitioner is Rs.3000/-. Orders were passed earlier by the Controlling Authority against the petitioner, but the same were set aside by the appellate authority and the matter was remanded.

2. The Controlling Authority has declined to grant relief to the petitioner for two reasons. Firstly it was held that the petitioner had not completed five years which is the requisite period for entitlement of grant of gratuity. Secondly, the pay of the petitioner which he was drawing on the last day of his service was more than Rs.1000/-/.

3. The Controlling Authority has committed a serious error in refusing to grant the benefit of gratuity to the petitioner. The petitioner has come up with the case that he was appointed as Printing Junior Assistant on 2-11-1972 and he resigned from service on 17-12-1977. The learned counsel for the respondent Mill Company does not dispute that in case the actual period of working is taken it is less than five years, but considering the weekly off and paid holidays as well as the period of leave entitled to the petitioner as per the Standing Orders of the Company, the total period of work will come to more than five years. While counting five years' period for entitlement of gratuity the actual working days are not to be taken into consideration. The days on which the petitioner was entitled to have weekly off or paid holidays are also to be taken into consideration. Similarly, the leave which has been earned by the petitioner and availed of, for which he was entitled to, should also have been counted as period of service. Taking into consideration these facts, the first reason given by the Competent Authority not to grant relief to the petitioner cannot be allowed to stand. So far as the second ground is concerned, it is not in dispute that for the purpose of gratuity the basic pay and dearness allowance are only to be taken into consideration, and other allowances and perks could not be taken into consideration for determining 'salary' for the purposes of entitlement of gratuity. From the documents brought on record of this writ petition it is not in dispute that the day on which the petitioner resigned from service his salary (basic + dearness allowance) was not more than Rs.1000/-.

3. In the result this special civil application is

allowed. The order of the Controlling Authority dated 17-8-1982 passed in application No.9 of 1981 is quashed and set aside. Respondent No.1 Company is directed to pay to the petitioner Rs.3,000/- by way of gratuity. The petitioner has been unnecessarily dragged into litigation for all these years. Hence the respondent Company is directed to pay Rs.1000/- to the petitioner by way of cost. It is further directed that the respondent Company shall pay interest on the amount of gratuity at the rate of 12% per annum from the date of resignation of the petitioner till the date of payment thereof. Rule made absolute accordingly.

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csm